

**IN THE DRAWINGS**

Corrected drawings are supplied herewith.

Enclosed are 10 Replacement Sheets showing the following amendment to Figures 1-10.

- 1) Shadings have been removed from Figures 1-10.
- 2) Reference numeral 120 (Figure 7) has been changed to 12D to match with the specification. Reference numeral 50 in Figure 2 has been removed.
- 3) Illegible numeral characters in Figures 2 and 8 have been corrected.

### **REMARKS**

This responds to the Office Action mailed on October 5, 2006, and the references cited therewith.

Claims 1, 10, 11, 15, 33 and 35-38 are amended, no claims are canceled, and no claims are added; as a result, claims 1-4, 8-15, and 32-38 are now pending in this application. Applicants appreciate the Examiner's time and effort in providing recommended claim amendments. To expedite prosecution, the Examiner is further invited to telephone the Applicants' representative to clarify, if necessary, any of the issues discussed herein.

#### **Claim Objections**

Claims 1, 10-11, 15 and 23 were objected to for informalities. Claims 1, 10-11, 15 and 32 have been amended along the lines suggested by the Examiner to address the informalities. Additionally, as suggested by the Examiner, the preamble of claim 1 has been amended to include "sales activity feedback." Therefore, Applicants respectfully request the claim objections be withdrawn.

#### **Drawing Objections**

Figures 1-10 of the drawings were objected to as containing improper shading and for containing reference characters not mentioned in the description.

Improper shadings from the drawings have been removed, the illegible reference characters have been properly corrected (Figure 8). Numeral character 22 (Figure 1) is mentioned in the description on page 7 line 1, so it has not been changed. The unnecessary numeral 50 from Figure 2 has been removed and numeral character 120 (Figure 7) has been changed to 12D as it is referred to in the specification. Reference numeral 48 referred to in the specification was illegibly shown in Figure 2 and has been corrected. Replacement drawing sheets are attached. Therefore, it is requested that the drawing objections be withdrawn.

Election/Restrictions

Claims 35-38 were indicated to be directed to an invention that is independent or distinct from the invention originally claimed and were therefore withdrawn from consideration by the Examiner.

In response to the Restriction Requirement, Applicants respectfully traverse the Examiner's contention that claims 35-38 are directed to an independent or distinct form of invention.

MPEP § 802.01.II states: "Two or more inventions are related (i.e., not independent) if they are disclosed as connected in at least one of design (e.g., structure or method of manufacture), operation (e.g., function or method of use), or effect. . . . Related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect (e.g., can be made by, or used in, a materially different process) and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (though they may each be unpatentable over the prior art.)"

The Examiner correctly states "Independent claims 35 and 37 and dependent claims 36 and 38 generate sales information for an item with a plurality of price levels and communicate a message to the user based on the price level when the item price reaches a threshold value" (Emphasis Added).

Claim 1 generates "a feedback indication for the item at each of the plurality of price choices using supply and sales level information" and communicates "the feedback indication to the user interface". Because, both "sales information for an item with a plurality of sales price levels" and "message . . . based on sales price level" (claims 32-35 have been amended to add "sales" to "price levels") are arguably connected with "a feedback indication . . . using . . . sales level information"; as such, the inventions in claims 1 and independent claims 35-38 are connected in at least one function and indeed are non-independent and non-distinct. Therefore, Applicants respectfully request that the Examiner reconsider the restriction requirement and withdrawal of claims 35-38 and proceed with the examination of the claims on the merits.

§112P.1 Rejection of the Claims

Claims 1, 11 and 15 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement.

With respect to claim 1, the Office Action alleges that “a first network information is not mentioned again in the claim limitation. Therefore, an essential step is missing.”

The cited limitation of claim 1 as amended recites:

“communicating, via a network, information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system”. (Emphasis Added)

Regarding the alleged indefiniteness of the quoted passage, in the amended limitation as recited above, the “information”, communicated via a network to a user interface appearing in the limitation, is repeated as the “the information” later in the claim. As such, Applicants respectfully submit that no essential step is missing and the claim language is not indefinite. Therefore, it is requested that the rejection under 35 U.S.C. § 112, first paragraph of claim 1 and its dependent claims 2-4 and 8-10 be withdrawn.

With respect to claim 11, the Office Action alleges that “There appears to be an essential step missing because there is not another claim limitation reciting “a feedback indication area” or “network based sales system” in the body of the claim.”

The cited quotes belong to the following recited limitation of claim 11:

“a feedback indication area responsive to the sales server via the network, the feedback indication area to be operative to display a feedback indication associated with the plurality of price choices pertaining to the selected item, the plurality of price choices being derived from a quantity of the item available and sales of the item within the network based sales system.” (Emphasis Added)

In the claim limitation as recited above, the “a feedback indication area” appearing in the limitation is recited again as “the feedback indication area” to be operative to display . . . Also, “the network based sales system” recited in this limitation refers to the “a network based sales system” recited in the preamble of the claim. As such, Applicants respectfully submit that no essential step is missing and the claim language is not indefinite. Therefore, it is requested that the rejection under 35 U.S.C. § 112, first paragraph of claim 11 and its dependent claims 12-14 be withdrawn.

With regards to claim 15, the limitation cited in the Office Action has been amended to recite as follows:

“means for generating a feedback indication for the item at each of the plurality of price choices using supply and sales level information generated from the actions of other users of the network based sales system; and  
means for communicating the generated feedback indication for the item to the user interface.”

In the claim limitation as recited above, the “the generated feedback indication” refers to the “a feedback indication” recited in the former limitation that was generated “for the item at each of the plurality of price . . .”. As such, Applicants respectfully submit that no essential step is missing and the claim language is not indefinite. Therefore, it is requested that the rejection under 35 U.S.C. § 112, first paragraph of claim 15 and its dependent claims 32-34 be withdrawn.

*§112P.2 Rejection of the Claims*

Claim 1 was further rejected under 35 U.S.C. § 112, second paragraph, for indefiniteness. Applicants respectfully disagree with the allegation of indefiniteness for at least the following reason:

The Office Action asserts that the preamble of claim 1 recites “A method” and the body of the claim begins with system step (e.g., communication via a first network based sales system). It then alleges that the claim “embraces or overlaps two different statutory classes of invention”. The language of the cited limitation of claim 1 is “communicating, via a network, an information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system.” Clearly, in the claim context, the “a network based sales system” does not claim a system limitation; rather it modifies or further describes a subject of the sentence, namely the “price choices.” As such, Applicants respectfully submit that claim does not embrace or overlap two different statutory classes of invention and thus, the claim language is not indefinite. Therefore, it is requested that the rejection under 35 U.S.C. § 112, second paragraph of claim 1 be withdrawn.

§101 Rejection of the Claims

Claim 1 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

The Office Action alleges that claim 1 “embraces or overlaps two different statutory classes of invention”.

This rejection is substantially the same as the rejection under 35 U.S.C. § 112, second paragraph discussed above. As such, at least for the same reasons as set forth above the claim does not embrace or overlap two different statutory classes of invention. Therefore, Applicants request that the rejection under 35 U.S.C. § 101 of claim 1 be withdrawn.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' representative at 408-278-4053 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By their Representatives,

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25 day of January, 2007.

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